(1)

IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

S.A. No. 359 /2006 **Single Bench**

Appellants
Defendants

:1) Heera S/o. Late Mangal aged about 65 years, (Dead and his heirs)

: 1-A) Butai Ram S/o. late Heera, aged about 39 years, Caste Uraon

: 2) Tulsi S/o. Late Mangal aged about 60 years (Dead and his heirs)

:2-A) Rambhagat Ram, S/o. late Tulsi Ram aged about 45 years, Caste Uraon.

:2-B) Rajkumar, S/o. late Tulsi Ram aged about 36 years, Caste-Uraon,

: **All** residents of Village Tatapani, Tahsil Pal District Surguja (C.G.).

P.R. No. 2320/06 Presented by Shri Umesh Patel dated 14/8/06

VERSUS

Respondents
Plaintiffs

:1) Sohrai S/o. Jhari aged about 45 years,

Rina 14/08/06

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(2)

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:2) Sukhdeo S/o. Hari aged about 43 years.

Both respondents 1 and 2 are Residents of Village Vishrampur, Tahsil Garhwa, District Garhwa (Bihar).

: 3) M.P. Government through Collector Ambikapur District Surguja (Now Chhattisgarh)

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. No. 359 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14/12/2006 Smt. Hamida Siddiqui, counsel for the appellants. Shri Bhupendra Singh, counsel for respondents. Heard on admission. Appellants/defendants have preferred this Second Appeal being aggrieved by the judgment and decree dated 21.7.2006 passed by the 2nd Additional District Judge (F.T.C.), Ramanujganj District Sarguja in Civil Appeal No. 6-A/2005 affirming the judgment and decree for partition of the suit property mentioned in Schedule-A to the plaint by the Civil Judge, Class-II, Ramanujganj dated 19.8.1997, in Civil Suit No. 21-A/1992. Brief facts are that Jhari and Mangal were brothers. Before the survey settlement in Sarguja State, they came to settle at village Tatapani. The suit land was recorded jointly in the survey settlement of Sarguja State. Thereafter, the suit land was also recorded in joint possession of Jhari and Mangal in Khasra panchsala from the year 1973-74 to1978-79. Thereafter, some disputes arose giving rise to proceedings for breach of peace. The respondents/plaintiffs filed the suit for partition of suit property on the ground that the suit property was joint property of Jhari and Mangal. The defendants/appellants contested the suit on the ground that the suit property is the self acquired property of Mangal. On appreciation of oral as well as documentary evidence, the Civil Judge, Class-II, Ramanujganj held that the suit property was joint property of Jhari and Mangal and the decreed the suit for partition. In appeal, the 2nd Additional District Judge, Ramanujganj affirmed the findings recorded by the learned Civil Judge, Class-II, Ramanujganj and dismissed the appeal.	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S. A. No. 353 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In view of the fact that the suit property was recorded as joint property as early as at the time of the survey settlement in Sarguja State and continued to be recorded in joint possession of Jhari and Mangal in Khasra Panchsala of 1973-74 and 1978-79, a presumption arose that the suit property was joint property and in this view of the matter, heavy burden was on the defendants/appellants to prove that the suit property was the self acquired property of Mangal. Both the Courts below on a proper appreciation of oral as well as documentary evidence have come to the conclusion that the defendants/appellants have miserably failed to prove that the suit property was the self acquired property of Mangal which is a finding of fact.

In this view of the matter, I am of the considered opinion that the finding recorded by both the Courts below is based on a proper appreciation of oral as well as documentary evidence and no substantial question of law arises for determination in this appeal. As a result, this Second Appeal is dismissed at the stage of admission.

In view of the above, M.(C).P. No. 1439/2006 for grant of stay stands dismissed. No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr

P.T.O.